

S.B. Civil Writ Petition No.6044/1997
Chhagan Lal Vs. State of Raj. & Ors.

22.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri B.C. Chirania for petitioner.
Shri B.S. Chhaba, Dy. GA.
Shri Mitesh Sharma for Shri Manoj Sharma
for respondent no.2.

Heard learned counsel for the
parties.

The petitioner has challenged the
notice of the respondent issued to him by
a Junior Engineer of the Public Works
Department, Mahila Chikitsalay Building,
Jaipur dated 15.10.1997 according to
which the petitioner has been required to
remove his Thadi facing the Mahila
Chikitsalay as a new gate was proposed to
be opened from that place. Shri B.C.
Chirania, the learned counsel for the

petitioner submits that while in his case the respondent are intending to remove the Thadi, but in the case of one Bheru Lal Saini, no such action has been taken and therefore the action of the respondent is discriminatory in nature. He alternatively submits that if at all the Thadi is causing any inconvenience at the present place, the respondent can provide him another place close to the boundary wall of the hospital, either inside or outside, according to their choice. He submits that the petitioner has been running the business from this Thadi for last more than 30 years and his removal at this stage would affect his right to livelihood as much as jeopardize his very survival as this Thadi is the only source of his income.

The petition has been contested by the respondent Municipal Corporation. Shri Mitesh Sharma, learned counsel for the Municipal Corporation argued that the licence for setting up the Thadi in question was originally granted to Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. (in short 'HPHC') and it was HPHC who was their licensee and not the petitioner and the petitioner was merely an agent of HPHC and, therefore, he cannot insist on continuation of the Thadi in question. It was argued that the hospital administration wanted to open a new gate of the hospital and the location of the Thadi was causing hindrance. Besides, Thadi was also affecting free flow of traffic in that busy area.

Shri Basant Chabba, the learned Dy. Government Advocate submits that whether or not the petitioner can be accommodated elsewhere, would always depend upon the discretion of the hospital administration and for availability of such place, he cannot make submission at this stage. It is for the petitioner to make an appropriate representation to the government officials in the Public Works Department or any other concerned department. He joined the counsel for the Municipal Corporation in submitting that licensee can have no right to continue from a place which is part of public road. He, therefore, prayed that the writ petition be dismissed.

Having heard the arguments of

learned counsel for the parties, I find that the licence in question was originally given to HPHC. The notice which the petitioner has placed on record is also in fact addressed to HPHC. So far as the argument of discrimination is concerned, it is for the respondent to examine whether or not to permit other persons to run the similar Thadies. Regarding provision of alternative place, it is for the petitioner to make a representation to the hospital administration and also to the Public Works Department for providing him alternate site for location of his Thadi. A licensee cannot certainly insist on continuing his possession on the land which is part of road if its removal is considered appropriate either for opening

gate or on account of traffic hindrance. This Court in its power of judicial review cannot certainly make any interference in the discretion exercised by the authorities. However, a liberty is given to the petitioner to make a representation to respondent no.2 and 3 and if the representation is received by respondents, it is expected of them to consider and decide the same as expeditiously as possible.

With the above observations, the writ petition is disposed of with no order as to costs.

(Mohammad Rafiq), J.

Rs/-